

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

MICHAEL WADE FITCH,

Plaintiff,

vs.

BRYAN SHULTZ, et al.,

Defendants.

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Case No. 4:05-CV-1109 FRB

ORDER AND MEMORANDUM

This matter is before the Court upon the application of Michael Wade Fitch for leave to commence this action without payment of the required filing fee. See U.S.C. § 1915(a). Upon consideration of the financial information provided with the application, the Court will grant plaintiff provisional leave to file this action.

The Complaint

Plaintiff, a prisoner currently confined at the South Central Correctional Center (“SCCC”), seeks monetary relief pursuant to 42 U.S.C. § 1983. Named as defendants are Bryan Shultz (SCCC correctional officer) and Michael Bowersox (SCCC superintendent). Plaintiff alleges that defendant Shultz violated his Eighth Amendment rights by using excessive force against him.

Discussion

Pursuant to 28 U.S.C. § 1391(b), venue for this action is proper where (i) any defendant resides, if all the defendants reside in the same state; (ii) a substantial part of the events or omissions giving rise to the claim occurred; or (iii) where any defendant may be found, if there is no district in which the action may otherwise be brought. All of the events described in the complaint occurred at SCCC, which is located in the Western District of Missouri. See 28 U.S.C. § 105(b)(5). Also, the

defendants can be found in the Western District of Missouri. Therefore, venue is not proper in the Eastern District of Missouri.

Pursuant to 28 U.S.C. § 1406(a), the District Court in which a case is filed laying venue in the wrong district may dismiss the case or, in the exercise of its discretion and in the interest of justice, transfer the case to any District Court in which such action could have been brought. In cases involving a plaintiff who is proceeding pro se and in forma pauperis, especially a prisoner, the usual practice is to transfer the case to the proper district. Therefore, this action shall be transferred to the United States District Court for the Western District of Missouri. Because venue is not proper in the Eastern District, no determination has been made as to whether the complaint is frivolous or fails to state a claim, or both, pursuant to 28 U.S.C. § 1915(e)(2)(A)(B).

In accordance with the foregoing,

IT IS HEREBY ORDERED that plaintiff's motion for leave to proceed in forma pauperis [Doc. #2] is **PROVISIONALLY GRANTED**, subject to modification by the Western District of Missouri upon transfer.

IT IS FURTHER ORDERED that the Clerk of Court shall not issue process or cause process to issue upon the complaint, because this action will be transferred to the Western District of Missouri.

An appropriate order of transfer shall accompany this order and memorandum.

Dated this 26th day of July, 2005.


UNITED STATES MAGISTRATE JUDGE